

STATE OF NEW YORK

DIVISION OF TAX APPEALS

---

In the Matter of the Petition	:	
of	:	
THE PIONEER GROUP	:	DETERMINATION
for Revision of a Determination or for Refund	:	
of Sales and Use Taxes under Articles 28 and 29	:	
of the Tax Law for the Period June 1, 1984	:	
through May 31, 1987.	:	

---

Petitioner, The Pioneer Group, 500 South Salina Street, Suite 1000, Syracuse, New York 13202, filed a petition for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period June 1, 1984 through May 31, 1987 (File No. 805211).

On August 17, 1989 and August 24, 1989, respectively, petitioner by its representative, Charles J. Engel, Jr., Esq., and the Division of Taxation by William F. Collins, Esq. (James Della Porta, Esq., of counsel) waived a hearing and agreed to submit the case for determination based on documents and briefs to be submitted by the parties by December 21, 1989. After due consideration of the record, Frank W. Barrie, Administrative Law Judge, hereby renders the following determination.

ISSUE

Whether petitioner's payments for certain snowplowing services were exempt from sales and use taxes because they were made as an agent for the City of Buffalo Urban Renewal Agency.

FINDINGS OF FACT

Petitioner, The Pioneer Group, is a New York partnership that has provided real estate management services, principally the management and maintenance of office buildings and shopping malls, for approximately 15 years. According to the audit report, it is made up of three partners, Michael A. Lazar, Michael J. Falcone and Edward W. McNeil, and has approximately 40 employees. Its gross sales during the period at issue were approximately \$4,500,000.00.

On November 13, 1987, the Division of Taxation issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner showing tax due of \$3,967.75, plus interest, for the period June 1, 1984 through May 31, 1987. Petitioner contested \$3,507.52 of the \$3,967.75 shown due. The contested amount consists of the sales and use taxes determined due on the purchase of snowplowing services by petitioner from Artmeier's Trucking (hereinafter "Artmeier") for the property located at Waterfront Village in Buffalo, New York. Petitioner did not contest the sales and use taxes determined due of \$460.23 on its purchase of snowplowing services from a supplier named Resurface for a property located in Monroe County. Schedule G of the audit report shows the following specific purchases of snow

removal services from Artmeier that were deemed subject to tax:

Sales tax quarter ended 2/28/85	\$ 357.50
	5,700.50
	7,453.75
	1,340.25
Sales tax quarter ended 2/28/86	8,798.00
Sales tax quarter ended 5/31/86	780.00
	8,356.00
Sales tax quarter ended 11/30/86	2,100.00
Sales tax quarter ended 2/28/87	700.00
	4,355.50
	1,673.50
Sales tax quarter ended 5/31/87	2,229.00
Total purchases from Artmeier	\$43,844.00
Tax due at 8%	\$ 3,507.52

Petitioner entered into three management agreements with the Waterfront Owners Association, Inc. (hereinafter "WOA") during the period at issue that are dated January 3, 1985, January 10, 1986 and March 25, 1987, respectively. In these agreements, WOA is described as a not-for-profit corporation with its principal office at Room 1101, City Hall, Buffalo, New York. These management agreements each provided, in part, as follows:

(i) WOA is responsible, under an agreement described as the Buffalo Waterfront Retail Center Development Area Declaration and Agreement (hereinafter "Development Area Declaration and Agreement") dated January 29, 1980, executed by the City of Buffalo Urban Renewal Agency (hereinafter "BURA") and WOA, for the management and maintenance of the common areas and parking facilities of Waterfront Village, a property financed and developed by BURA;

(ii) WOA is authorized under the Development Area Declaration and Agreement to appoint a manager to fulfill its managerial and maintenance duties;

(iii) Petitioner's obligations as manager of the common areas of Waterfront Village included the soliciting of bids for and awarding a contract for snowplowing;

(iv) Petitioner was also obligated "to calculate, notify Owners of, and collect Annual Assessments..." in order to pay for common area maintenance costs;

(v) Petitioner was not entitled to a management fee<sup>1</sup> for its services, but was "entitled to reimburse itself from Annual Assessments for the reasonable direct costs of office supplies, telephone charges, postage and such other costs as would not have been incurred by it but for its performance of its obligations pursuant to this Agreement." Petitioner was not entitled to be reimbursed for the costs of general office overhead or the personnel engaged to perform its duties under the agreement and could not be reimbursed for any amount in excess of \$500.00 except with the prior written approval of WOA.

In the agreements, WOA also delegated limited authority to petitioner to act as its agent,

---

<sup>1</sup>There is no explanation in the record concerning why petitioner agreed to manage and maintain the common areas of Waterfront Village in light of the fact that its economic remuneration for its services appears to be extremely limited under the agreements in evidence.

including: (i) the right to utilize all collection remedies available to WOA pursuant to the Development Area Declaration and Agreement provided, however, that petitioner obtained the prior written approval of WOA before initiating any collection proceeding; and (ii) "[t]o contract for and pay for all services, labor and materials reasonably necessary to operate, maintain and repair the Common Areas, provided, however,..." that petitioner obtained the prior written approval<sup>2</sup> of WOA before executing any contract for snowplowing or "any contract involving the expenditure of \$1,000.00 or more on a single item or which is expected to require an aggregate expenditure of \$1,000.00 or more over the term of the contract...."

Petitioner, as agent for WOA, entered into three snow removal contracts with Artmeier during the period at issue that are dated October 2, 1984, September 18, 1985 and September 23, 1986, respectively, for the removal of snow at the commercial property owned by WOA located at Waterfront Village in Buffalo. Artmeier did not collect sales tax from petitioner for its snow removal services. It should be noted that WOA was designated owner of the subject property and not BURA in the three snow removal contracts.

Petitioner submitted into evidence a copy of the lengthy Development Area Declaration and Agreement previously mentioned in Finding of Fact "3", supra. The main purpose of this agreement was to provide a method by which BURA, a municipal urban renewal agency created under General Municipal Law Article XV-A, could impose "mutual and beneficial restrictions, covenants...under a general plan and scheme of development and improvement for the benefit of the Property [Waterfront Village]." A review of this document shows that BURA intended to limit its activities primarily

to the development phase of the Waterfront Village project. Section 22 of the agreement provides specifically for the transfer of control from BURA to to WOA.

"Upon the earlier of the conveyance by Deed from BURA of the last of the Parcels comprising the Property owned by it, or the recordation among the Land Records of Erie County, New York, of a notice of withdrawal and transfer, the rights, duties and obligations vested in BURA, as Declarant, shall be deemed assigned to WOA, as Declarant, and thereafter, all of such rights, duties and obligations shall be vested in WOA to the same extent as if it had originally been vested with the same."

But even prior to the transfer of control, WOA, which is described in the Development Area Declaration and Agreement as "a New York non-profit corporation formed by Declarant [BURA] for the purpose of providing non-profit, civic oriented services, as well as constituting the organization (whose membership consists of all Owners of the Commercial, Residential, Parking and Restaurant Parcels...) responsible for maintaining the Common Areas...and for representing the interests of all Persons having any interest in any portion of the Property", was responsible for the management of the property's common areas. Further, WOA was responsible for the calculation and collection of annual assessments, the amounts imposed annually on owners for the purpose of providing funds to pay common area maintenance costs.

Under the Development Area Declaration and Agreement, WOA had the specific right to appoint a manager to fulfill its managerial and maintenance duties. WOA, acting pursuant to this authority, appointed petitioner to fulfill its managerial or maintenance duties as noted in Finding of Fact "3", supra.

---

<sup>2</sup>Petitioner did not submit into evidence copies of any written approvals by WOA that were obtained prior to its executing the respective contracts with Artmeier for snowplowing.

## SUMMARY OF THE PARTIES' POSITIONS

The Division of Taxation contends that the snow removal services were not contracted or paid for by petitioner as agent for BURA and such purchases were subject to the imposition of sales and use tax. Petitioner argues, by contrast, that the snow removal services were, in fact, hired by petitioner as agent for BURA and such purchases were therefore exempt, under Tax Law § 1116(a)(1), from the imposition of sales and use tax.

## CONCLUSIONS OF LAW

A. Tax Law § 1116(a)(1) provides that purchases of New York State agencies, instrumentalities, public corporations and political subdivisions are exempt from sales and use taxes. Under this provision, BURA, as a municipal urban renewal agency created pursuant to General Municipal Law § 639, was exempt from the payment of sales and use taxes on its purchases.

B. Petitioner's specious argument that it was an agent of BURA must be rejected, however. As noted in Finding of Fact "4", supra, petitioner's purchases of snow removal services were not made as an agent of BURA but rather as an agent of WOA (cf. Matter of Custom Management Corporation, State Tax Commission, August 14, 1987, confirmed 148 AD2d 919).

C. Although WOA is a non-profit corporation, as noted in Finding of Fact "5", supra, there is no evidence in the record whether it was an exempt organization for sales tax purposes. In any event, civic, social and/or political objectives do not necessarily equate to charitable ones in determining whether a non-profit corporation is entitled to exempt organization status for sales tax purposes (cf. Matter of Woodhaven Residents Block Association, Inc., State Tax Commission, November 20, 1986; Matter of Homsite Holding Co., Inc. and Cayuga Developments, Inc., State Tax Commission, February 13, 1987), and therefore it is unlikely that WOA had exempt organization status.

D. Further, petitioner could not have been acting as an agent of the City of Buffalo Urban Renewal Agency because, as noted in Finding of Fact "5", supra, under the Development Area Declaration and Agreement, BURA did not have responsibility for the management and maintenance of the common areas. Rather, WOA was expressly declared to have such responsibility. As noted in Finding of Fact "5", supra, BURA limited its activities primarily to the development phase of the Waterfront Village project (cf. Matter of Fagliarone, Grimaldi & Associates, Tax Appeals Tribunal, May 4, 1989). In performing management and maintenance of the common areas of Waterfront Village, petitioner was therefore fulfilling the responsibilities of WOA and not of the City of Buffalo Urban Renewal Agency.

E. The petition of The Pioneer Group is denied, and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued November 13, 1987 is sustained.

DATED: Troy, New York  
February 8, 1990

/s/ Frank W. Barrie  
ADMINISTRATIVE LAW JUDGE